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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 BRYANNA K. ALFANO,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for
Operations,

12 Defendant.

CASE NO. C17-5776-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

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14 Plaintiff Bryanna K. Alfano proceeds through counsel in her appeal of a final decision of
15 the Commissioner of the Social Security Administration (Commissioner). The Commissioner
16 denied Plaintiff's applications for Supplemental Security Income (SSI) and Child's Disability
17 Benefits (CDB) after a hearing before an Administrative Law Judge (ALJ). Having considered
18 the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is
19 AFFIRMED.

20 **FACTS AND PROCEDURAL HISTORY**

21 Plaintiff was born on XXXX, 1996.¹ She has an 11th-grade education, and has never
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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 worked. (AR 206-07.)

2 Plaintiff applied for SSI and CDB in August 2014. (AR 177-92.) Those applications were
3 denied initially and upon reconsideration, and Plaintiff timely requested a hearing. (AR 107-13,
4 116-27, 142-43.)

5 On June 7, 2016, ALJ John Michaelson held a hearing, taking testimony from Plaintiff and
6 a vocational expert (VE). (AR 39-66.) On July 12, 2016, the ALJ issued a decision finding
7 Plaintiff not disabled. (AR 20-34.) Plaintiff timely appealed. The Appeals Council denied
8 Plaintiff's request for review on July 25, 2017 (AR 1-6), making the ALJ's decision the final
9 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this
10 Court.

11 **JURISDICTION**

12 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining
15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
16 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
17 engaged in substantial gainful activity since November 1, 2010, the alleged onset date. (AR 22.)
18 At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ
19 found severe Plaintiff's depression and anxiety with agoraphobia. (AR 23-25.) Step three asks
20 whether a claimant's impairments meet or equal a listed impairment. The ALJ found that
21 Plaintiff's impairments did not meet or equal the criteria of a listed impairment. (AR 26-29.)

22 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess
23 residual functional capacity (RFC) and determine at step four whether the claimant has

1 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
2 performing a full range of work at all exertional levels, with the following additional limitations:
3 she can have no more than occasional interaction with supervisors and no more than brief
4 superficial interaction with co-workers and the general public. (AR 29.)

5 Because Plaintiff has no past work (AR 32), the ALJ proceeded to step five, where the
6 burden shifts to the Commissioner to demonstrate at step five that the claimant retains the capacity
7 to make an adjustment to work that exists in significant levels in the national economy. With the
8 assistance of the VE, the ALJ found that Plaintiff was capable of transitioning to representative
9 occupations including industrial cleaner, lab equipment cleaner, and laundry worker. (AR 32-33.)

10 This Court's review of the ALJ's decision is limited to whether the decision is in
11 accordance with the law and the findings supported by substantial evidence in the record as a
12 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
13 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
14 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
15 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's
16 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
17 2002).

18 Plaintiff argues the ALJ erred in (1) discounting her subjective symptom testimony, and
19 (2) assessing certain medical evidence and opinions.² The Commissioner argues that the ALJ's
20 decision is supported by substantial evidence and should be affirmed.

22 ² Plaintiff's opening brief also challenges the ALJ's RFC assessment and step-five findings, but in
23 doing so only reiterates arguments made elsewhere. Dkt. 12 at 17-18. Accordingly, these issues will not
be analyzed separately.

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Medical evidence 2010-12

Plaintiff argues that her testimony was consistent with this episode, and it does not constitute a reason to discount Plaintiff's testimony. Dkt. 12 at 11. Plaintiff misses the ALJ's point: the ALJ reasonably found that the record between the alleged onset date (November 2010) and October 2012 does not document any sustained symptoms, and therefore is inconsistent with Plaintiff's allegation of disability dating back to November 2010. This is a reasonable inference from the context of the record between 2010 and 2012, and logically explains why the ALJ found that Plaintiff's alleged onset date was not supported by the record.

The ALJ found that evidence after October 2012 describes some symptoms, but does not corroborate Plaintiff's testimony that she had a complete inability to function around others

1 without her parents. (AR 31.) Plaintiff argues that the ALJ could not reject her testimony solely
2 based on whether her statements were supported by objective evidence. Dkt. 12 at 12. But the
3 ALJ did not solely rely on a lack of corroboration in the medical record; he cited other reasons as
4 well. The ALJ did not err in considering the degree to which Plaintiff's allegations were
5 corroborated by the record, along with other reasons. *See Rollins v. Massanari*, 261 F.3d 853, 857
6 (9th Cir. 2001) ("While subjective pain testimony cannot be rejected on the sole ground that it is
7 not fully corroborated by objective medical evidence, the medical evidence is still a relevant factor
8 in determining the severity of the claimant's pain and its disabling effects.").

9 Activities

10 The ALJ found that Plaintiff's activities showed her to be more functional than she alleged.
11 Specifically, the ALJ noted that Plaintiff was able to continue to attend her GED courses until June
12 2015, and that she was able to relate appropriately with her treatment providers throughout the
13 adjudicated period. (AR 28, 31.) The ALJ found that these activities suggested Plaintiff was not
14 as socially limited as she claimed to be.

15 The ALJ also cited a December 2013 treatment note indicating that Plaintiff "liked to hang
16 with her friends, get high on marijuana four nights each week, and play video games." (AR 31
17 (citing AR 310).) While Plaintiff's brief (Dkt. 12 at 11) characterizes this treatment note as a one-
18 time reference and speculates that it could reflect her functioning at that time (which had declined
19 by the time of the hearing), references to Plaintiff's socializing are found in other parts of the
20 record as well. (*See* AR 259 (September 2013 note indicating that Plaintiff drinks a little with
21 friends), 275 (October 2012 note indicating that Plaintiff has three good friends), 371 (describing
22 a two-year dating relationship that ended in 2013).) Plaintiff has not cited any persuasive authority
23 requiring the ALJ to ask her about the December 2013 treatment note at the hearing, before he

1 could cite it as an inconsistency. *See* Dkt. 12 at 11 (“[I]f the ALJ was concerned about this apparent
2 contradiction, he could have questioned Alfano about this at her hearing.”).

3 Thus, the ALJ identified specific ways in which Plaintiff’s activities were inconsistent with
4 the social allegations she alleged, and did not err in discounting her testimony on that basis.³

5 In sum, because the ALJ provided multiple clear and convincing reasons to discount
6 Plaintiff’s testimony, the ALJ’s findings in this respect are affirmed.

7 Medical evidence

8 The ALJ gave no weight to a medical source statement written by Daniel Lam, M.D.,
9 Plaintiff’s treating psychiatrist. (AR 397-99.) Plaintiff relied on Dr. Lam’s opinion to establish
10 that her depression and anxiety met a listing, but the ALJ rejected that opinion for that proposition.
11 (AR 27.) Plaintiff argues that the ALJ’s reasons to discount Dr. Lam’s opinion are not legally
12 sufficient, and that the opinion should be credited, leading to a finding of disability at step three.
13 Dkt. 12 at 6-8. Plaintiff also argues that the ALJ erred in crediting opinions written by State agency
14 examining psychologists because their opinions were written before the end of the adjudicated
15 period, and thus they did not have access to all of the record before the ALJ.⁴ Dkt. 12 at 10. The
16 Court will consider the disputed opinions in turn.

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19 ³ The ALJ also found inconsistency between Plaintiff’s statements that she can pay attention for
20 only 5-10 minutes, and cannot follow spoken instructions very well, but that she also has the ability to shop
21 online. (AR 28.) It is not clear why online shopping would reasonably require more than 5-10 minutes of
22 concentration, or how the ability to follow spoken instructions would be at all relevant to that activity. This
reasoning is harmless error, however, in light of the ALJ’s other reasoning related to Plaintiff’s social
activities/limitations. *See Carmickle v. Comm’r of Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir.
2008).

23 ⁴ This section of Plaintiff’s opening brief also contains a summary of other evidence that she posits
supports Dr. Lam’s opinion and her own testimony, but this section does not establish any particular error
in the ALJ’s decision and is therefore superfluous. Dkt. 12 at 8-10.

1 Legal standards

2 In general, more weight should be given to the opinion of a treating physician than to a
3 non-treating physician, and more weight to the opinion of an examining physician than to a non-
4 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted
5 by another physician, a treating or examining physician's opinion may be rejected only for "'clear
6 and convincing'" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).
7 Where contradicted, a treating or examining physician's opinion may not be rejected without
8 "'specific and legitimate reasons' supported by substantial evidence in the record for so doing."
9 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may reject
10 physicians' opinions "by setting out a detailed and thorough summary of the facts and conflicting
11 clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157
12 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than merely stating
13 her conclusions, the ALJ "must set forth [her] own interpretations and explain why they, rather
14 than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

15 Dr. Lam's opinion

16 Dr. Lam began treating Plaintiff in December 2010, and saw her approximately every three
17 months. (AR 397.) In a May 2016 form opinion, Dr. Lam rated as "marked" Plaintiff's limitations
18 as to daily activities, social functioning, and concentration, persistence, and pace. (AR 398.) Dr.
19 Lam also stated that Plaintiff's condition had led to at least three episodes of decompensation
20 lasting at least two weeks in length in the prior year. (AR 399.)

21 The ALJ found that the record showed that Plaintiff's limitations as to daily activities and
22 social functioning were moderate, and that her deficits as to concentration, persistence, and pace
23 were mild. (AR 26-27.) With respect to Dr. Lam's ratings, the ALJ found that Dr. Lam did not

1 explain why Plaintiff's concentration, persistence, and pace deficits were marked, specifically
2 because Plaintiff had never worked, and thus Dr. Lam's opinions as to how Plaintiff would perform
3 in a work setting were speculative; according to the ALJ, Plaintiff's school history and daily
4 activities do not suggest a marked problem with concentration, persistence, or pace. (AR 28.)

5 The ALJ also found that Dr. Lam inadequately explained why Plaintiff's sensitivity to how
6 other people perceive her would lead to a marked deficit in social functioning. (AR 28.) The ALJ
7 found that the record instead suggested that Plaintiff "functions appropriately in this area." (*Id.*)

8 Lastly, the ALJ found that nothing in the record supports Dr. Lam's opinion that Plaintiff
9 experienced repeated episodes of decompensation, and that Dr. Lam's "willingness to overstate
10 the severity of the claimant's conditions results in an inaccurate picture of the claimant's mental
11 limitations." (AR 28.)

12 Plaintiff argues that the ALJ's discussion of Dr. Lam's opinion vis-à-vis his treatment notes
13 is internally inconsistent, because the ALJ acknowledged that Dr. Lam's "description of the
14 claimant's treatment, response, and prognosis seems to be generally supported by his treatment
15 records," and yet gave no weight to his opinions. Dkt. 12 at 6-7 (citing AR 27). But Plaintiff
16 misses the ALJ's point: the ALJ found that Dr. Lam's treatment notes supported his description of
17 Plaintiff's treatment, response, and prognosis (*see* AR 397), but the ALJ found that those notes did
18 *not* support Dr. Lam's opinion as to the impact of Plaintiff's conditions on her functional abilities
19 (AR 398-99). This finding is supported by substantial evidence, because, as described above, the
20 record contains conflicting information as to extent of Plaintiff's activities and functioning.
21 Although some of the record describes limitations, other parts of the record describe her with more
22 functionality. *See, e.g.*, AR 217 (Plaintiff's self-report that she could draw, read, and write often
23 and well), 275 (Plaintiff reports to provider that she has three good friends), 310 (Plaintiff reports

1 socializing with friends), 364 (Dr. Lam describes Plaintiff as “doing better” with no paranoia,
2 aggression, or anxiety attacks), 373 (consultative examiner’s opinion regarding Plaintiff’s
3 functionality, suggesting that her cognitive, social, and concentration limitations were not
4 necessarily work-preclusive). Although Plaintiff highlights other portions of the record, the record
5 contains substantial evidence to support the ALJ’s interpretation and it must therefore be affirmed.
6 *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) (“Where the evidence
7 is susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be
8 upheld.”).

9 Furthermore, substantial evidence also supports the ALJ’s finding that Dr. Lam’s opinion
10 regarding Plaintiff’s episodes of decompensation was entirely unsupported. As found by the ALJ,
11 the record does not describe any episodes of decompensation of extended duration, let alone three
12 in the year prior to Dr. Lam’s opinion. Plaintiff cites various portions of the record as establishing
13 the existence of episodes of decompensation, but none of those notes reference an episode lasting
14 for at least two weeks, as stated in Dr. Lam’s opinion. *See* Dkt. 12 at 7 (citing AR 255, 259, 261,
15 263, 264, 275, 388, 390, 395). Plaintiff has not shown that the ALJ erred in finding that this portion
16 of Dr. Lam’s opinion was unsupported, or in discounting the opinion on that basis.⁵ *See Thomas*,
17 278 F.3d at 957 (“The ALJ need not accept the opinion of any physician, including a treating
18 physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.”).

19 Because the ALJ provided specific and legitimate reasons to discount Dr. Lam’s opinion,
20 the ALJ’s assessment of that opinion is affirmed. Because Plaintiff’s step-three argument relies
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22 ⁵ The Commissioner does not defend the ALJ’s suggestion that Dr. Lam willingly overstated the
23 severity of Plaintiff’s conditions. (AR 28.) The Court finds that such speculation as to Dr. Lam’s
motivations or purposes is not supported by substantial evidence, but that this error is harmless in light of
the ALJ’s other reasons to discount Dr. Lam’s opinion. *See Carmickle*, 533 F.3d at 1162-63.

1 entirely on Dr. Lam's opinion, and the ALJ properly rejected that opinion, Plaintiff has not shown
2 that the ALJ erred in finding her not disabled at step three.

3 State agency opinions

4 The ALJ gave significant weight to the State agency opinions, finding them consistent with
5 the record. (AR 28.) Plaintiff argues that because the State agency reviewers wrote their opinions
6 in 2014, and did not therefore have access to the entire record before the ALJ in 2016, the ALJ
7 erred in relying on the State agency opinions. Dkt. 12 at 10.

8 It is true that the State agency opinions were written before the record was complete, but
9 the ALJ had access to the complete record and found that the opinions were consistent with the
10 record. (AR 28.) Plaintiff has not established error in the ALJ's crediting the State agency
11 opinions in light of the context of the entire record. *See Andrews v. Shalala*, 53 F.3d 1035, 1041
12 (9th Cir. 1995) ("[T]he report of a nonexamining, nontreating physician need not be discounted
13 when it 'is not contradicted by *all other evidence* in the record.'" (quoting *Magallanes*, 881 F.2d
14 at 752 (emphasis in original))). The ALJ did not cite the State agency opinions as a reason to
15 discount Dr. Lam's opinion, and thus Plaintiff's argument in this regard is inapposite. *See* Dkt. 14
16 at 5.

17 CONCLUSION

18 For the reasons set forth above, this matter is AFFIRMED.

19 DATED this 19th day of June, 2018.

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22 Mary Alice Theiler
23 United States Magistrate Judge